

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MATTHEW T. SHAFER, SHERI
HAUGABOOK, PETER HEIDT, JEFFREY
SHOVER, MACE TAMSE, GEORGE
LIVANOS, MARK LOFTUS, JEFFREY
SAMSEN, JEFFREY SHERESKY, STEVE
SHERESKY, STEVE NADLER, AND SANDY
JUKEL, ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

MORGAN STANLEY, MORGAN STANLEY
SMITH BARNEY LLC, MORGAN STANLEY
COMPENSATION MANAGEMENT
DEVELOPMENT AND SUCCESSION
COMMITTEE, and John/Jane Does 1-20,

Defendants.

Civil Action No. 1:20-cv-11047-PGG

CLASS ACTION

**MOTION FOR LEAVE TO FILE PLAINTIFFS' SECOND NOTICE OF
SUPPLEMENTAL AUTHORITY IN SUPPORT OF THEIR OPPOSITION
TO DEFENDANTS' MOTION TO COMPEL ARBITRATION**

PLEASE TAKE NOTICE that Plaintiffs will respectfully move this Court before the Honorable Paul G. Gardephe, at the United States Courthouse, 40 Foley Square, Courtroom 705, New York, New York 10007, at such time as counsel may be heard, for leave to file the second notice of supplemental authority attached as Exhibit A regarding Defendants' pending motion to compel arbitration (ECF No. 65).

Defendants initially moved to compel arbitration on March 24, 2021, with respect to the original Plaintiff, Matthew Shafer. (ECF Nos. 42-43, filed May 5, 2021.) Shafer responded on April 21, 2021. (ECF No. 70, filed May 5, 2021.) Defendants replied on May 5, 2021. (ECF No. 71, filed May 5, 2021.) On March 10, 2022, the Court granted Shafer's motion to join

additional plaintiffs. As a result, the Court denied Defendants' motion to compel arbitration without prejudice to renewal after the filing of an amended complaint. (ECF No. 57.)

Plaintiffs filed their amended complaint on March 24, 2022 (ECF No. 58). Defendants moved to compel arbitration of Plaintiffs' claims on May 9, 2022 (ECF Nos. 65-68, filed June 29, 2022). Plaintiffs responded on June 8, 2022. (ECF No. 72, filed June 30, 2022.) Defendants replied on June 29, 2022. (ECF No. 69, filed June 29, 2022.)

Plaintiffs filed a notice of supplemental authority related to Defendants' motion to compel arbitration on December 20, 2022. (ECF No. 74-1.) Defendants responded on January 9, 2023. (ECF No. 76.)

On February 9, 2023, the Tenth Circuit Court of Appeals entered an opinion in *Harrison v. Envision Management Holding, Inc. Board of Directors*, 59 F.4th 1090 (10th Cir. Feb. 9, 2023). See Exhibit 1 to *Plaintiffs' Second Notice of Supplemental Authority in Support of Their Opposition to Defendants' Motion to Compel Arbitration*. This opinion involves issues raised by Defendants' motion to compel arbitration in this case, including whether Plaintiffs' claims under ERISA §§ 409(a) and 502(a)(2) seek relief on behalf of the plan, or whether—as Defendants incorrectly argue—these statutes may be read to authorize a remedy limited to losses to a single participant's defined-contribution plan account even where a breach of ERISA caused greater losses to the plan and to other participants' plan accounts. 29 U.S.C. §§ 1109(a), 1132(a)(2).

Defendants do not oppose this Motion,¹ so long as they are allowed to respond to the notice.

¹ In accordance with Section IV.C of the Court's Individual Rules of Practice, Plaintiffs are therefore filing the Motion on ECF without awaiting a response.

WHEREFORE, Plaintiffs respectfully request that the Court grant their *Motion for Leave to File Plaintiffs' Second Notice of Supplemental Authority in Support of Their Opposition to Defendants' Motion to Compel Arbitration*.

Dated: March 21, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2023, a copy of the foregoing *Motion for Leave to File Plaintiffs' Second Notice of Supplemental Authority in Support of Their Opposition to Defendants' Motion to Compel Arbitration* was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Mathew P. Jasinski
Mathew P. Jasinski